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SUPREME COURT, U.S.

No. 10 ORIGINAL

IN THE

Supreme Court of the United States

OCTOBER TERM, 1952

STATE OF ARIZONA

Complainant

v.

STATE OF CALIFORNIA, PALO VERDE IRRIGATION DISTRICT, IMPERIAL IRRIGATION DISTRICT COACHELLA VALLEY COUNTY WATER DISTRICT, METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, CITY OF LOS ANGELES, CALIFORNIA, CITY OF SAN DIEGO, CALIFORNIA and COUNTY OF SAN DIEGO, CALIFORNIA.

Defendants

MOTION ON BEHALF OF SIDNEY KARTUS, SUCCESSOR TO FRED T. COLTER, APPLICANT FOR AND ON BEHALF OF THE STATE OF ARIZONA AND WATER USERS UNDER GLEN-BRIDGE-VERDE-HIGHLINE PROJECTS, AND M. C. AUGUSTINE, IONE DOCKSTADER, JOHN R. WESTBERG, E. C. HILDEBRAND, R. H. JOHNSON, JOE L. HUERTA HI-T RANCH CORPORATION, AND PERRY C. GREEN, MELVIN A. GREEN, HAROLD S. LAUER, JUDGE MANOR, I. F. NELSON, ADDIE V. BURTON, MARY E. SCHMID, AND R. V. McDANIEL, LANDHOLDERS UNDER SAID PROJECTS, FOR LEAVE TO FILE PETITION TO INTERVENE.

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Attorney for Petitioners

COMES NOW, SIDNEY KARTUS, successor to Fred T. Colter, Applicant for and on behalf of the State of Arizona and water users under the Glen-Bridge-Verde-Highline projects, and M. C. Augustine, Ione Dockstader, John R. Westberg, E. C. Hildebrand, R. H. Johnson, Joe L. Huerta, and Hi-T Ranch Corporation, and Perry C. Green, Melvin A. Green, Harold S. Lauer, Judge Manor, I. F. Nelson, Addie V. Burton, Mary E. Schmid, and E. V. McDaniel, landholders under said projects, and respectfully move this Court for leave to intervene in the above-entitled cause and for leave to file a petition for intervention for the following reasons:

I.

The State of Arizona, as complainant, has invoked the original jurisdiction of this Court pursuant to the provisions of Article III, Section 2, Clause 2, of the Constitution of the United States of America in regard to the rights and interests which it asserts in the Colorado River. On January 19, 1953, the Court granted Arizona's Motion for Leave to file Bill of Complaint and permitted the United States to file its petition for intervention in accordance with its motion requesting such permission.

II

In its Bill of Complaint, Arizona asks the Court to quiet its title to waters allegedly apportioned to Arizona by the Colorado River Compact signed at Santa Fe, New Mexico, on November 24, 1922, by representatives of the seven Colorado River states and the United States. The compact pro-

vided in Article I thereof, that "The major purposes of this compact are to provide for the equitable division and apportionment of the use of the waters of the Colorado River System; . . .". Article IX thereof provided that "This compact shall become binding and obligatory when it shall have been approved by the legislatures of each of the signatory states and by the Congress of the United States. . . ". This compact was ratified by the State of Arizona through its legislature on February 24, 1944. [1]

III

Initiation of rights was begun for the Glen-Bridge-Verde-Highline Projects in 1916, and on September 20, 1923, and as amended thereafter, Fred T. Colter, then a State Senator of Arizona, on the authority of the then Governor of the State of Arizona, did file for and on behalf of the State of Arizona and water users under said Glen-Bridge-Verde-Highline Projects, applications for permits to appropriate the public waters of the State of Arizona and applications for permits to construct dams and reservoirs and to store for beneficial use all then unappropriated reservoir storage waters of the Colorado River, and did file therefor on Glen Canyon Storage, Diversion, and Power Dam, Bridge Canyon Storage, Diversion, and Power Dam, the Arizona Highline Canal, Marble Gorge, Storage, Power, and Diversion Dam, and alternate Verde Tunnel, as the principal sites and on some forty other sites, to irrigate 6,000,000 acres and develop 5,000,000 electrical horsepower,

1. Arizona Laws, 1944, First Special Session, pp. 12-13.

and for other beneficial uses of water in Arizona. These applications were filed under and by virtue of the statutes of Arizona.[2] Said applications thereafter were granted by the State Water Commissioner and the State Land Commissioner, the state officials designated by statute for such purpose.

IV

Petitioner, Sidney Kartus, is successor to Fred T. Colter as such applicant and filee.

V

From the time of initiation and filing of these applications and up to the present, they have been kept up with due and reasonable diligence in compliance with all laws relating to such matters. Eight volumes of records of such diligence are on file in the office of the State Land Commissioner of Arizona comprising some 8000 pages and hundreds of maps, charts, and exhibits. The various acts and events recorded in these eight volumes will be more fully itemized and set forth in the Petition for Intervention should the Court grant this motion.

VI

Petitioners M. C. Augustine, Ione Dockstader, John R. Westberg, E. C. Hildebrand, R. H. Johnson, Joe L. Huerta, and Hi-T Ranch Corporation, are the owners of lands presently being farmed, and Petitioners Perry C. Green, Melvin A. Green, Harold S. Lauer, Judge Manor, I. F. Nelson,

2. Section 5337 of the Revised Statutes of 1913, Civil Code; Section 3281 of the Revised Code of 1928; Section 75-102 of the Arizona Code of 1939.

Addie V. Burton, Mary E. Schmid, and E. V. McDaniel are the owners of land presently not being farmed, all of which lands are within the projects for which said applications or filings were made. They constitute members of two classes so numerous as to make it impracticable to name them all as petitioners, but said petitioners are fairly representative of the two classes. The matters to be determined in the above-entitled cause are of common, general, and great interest to the persons constituting such classes for which reason these petitioners respectfully file this petition for all such persons in like situation pursuant to Rule 23 of the Federal Rules of Civil Procedure.

VII

Petitioners M. C. Auustine, Ione Dockstader, John R. Westberg, E. C. Hildebrand, R. H. Johnson, Joe L. Huerta, and Hi-T Ranch Corporation, and other persons in the same class, are presently farming lands located in the central portion of the State of Arizona within the limits of said projects. In order to have a successful farm operation these petitioners and others of their class are required to irrigate the lands which they farm. These lands are located in an arid climate where precipitation is insufficient to satisfy the need for water for agricultural purposes. No substantial source of water except the Colorado River System is available to these petitioners to irrigate their lands. Presently they are using waters from the underground water supply tapped by wells or are using waters from the tributaries of the Colorado River System which are insufficient in amount to main-

tain their present farming. In recent years because the draft on the underground water is greatly in excess of the recharge, the well depths are increasing and the well discharges are decreasing. Because of such diminution of the underground water supply or insufficiency of such tributary water supply the farms of these petitioners and of others of their class, which are presently cultivated, will go out of cultivation unless additional water from the main stream of the Colorado River is obtained for these lands.

VIII

The water needed by petitioners M. C. Augustine, Ione Dockstader, John R. Westberg, E. C. Hildebrand, R. H. Johnson, Joe L. Huerta, and Hi-T Ranch Corporaton, and others in the same class to preserve their existing agriculture is not available to them or to the State of Arizona under the Colorado River Compact. This compact, even if interpreted by the Court in the manner requested by Arizona in its Bill of Complaint, does not provide for Arizona or for these petitioners or others in the same class any water to preserve their existing agriculture nor does Arizona's Bill of Complaint allege or seek to quiet title to the water heretofore appropriated for the lands of petitioners M. C. Augustine, Ione Dockstader, John R. Westberg, E. C. Hildebrand, R. H. Johnson, Joe L. Huerta, and Hi-T Ranch Corporation, and others of their class under and by virtue of the applications referred to hereinabove.

IX

Petitioners Perry C. Green, Melvin A. Green,

Harold S. Lauer, Judge Manor, I. F. Nelson, Addie V. Burton, Mary E. Schmid, and E. V. McDaniel, and others of the same class, are the owners of desert land within the projects mentioned hereinabove. These lands are exceedingly fertile and feasible of irrigation, and when irrigated will be exceedingly productive. Said lands can be reclaimed and put under irrigation under the projects filed upon and with the waters appropriated by the applicant, the said Fred T. Colter and his successor, the petitioner, Sidney Kartus, acting for and on behalf of said petitioners Perry C. Green, Melvin A. Green, Harold S. Lauer, Judge Manor, I. F. Nelson, Addie V. Burton, Mary E. Schmid, and E. V. McDaniel, and others of the same class. The Colorado River Compact, even if interpreted as requested by Arizona in its Bill of Complaint, does not provide for Arizona or for these petitioners or others in the same class any waters to reclaim their land nor does Arizona's Bill of Complaint allege or seek to quiet title to the waters heretofore appropriated for the lands of petitioners Perry C. Green, Melvin A. Green, Harold S. Lauer, Judge Manor, I. F. Nelson, Addie V. Burton, Mary E. Schmid, and E. V. McDaniel, and others of their class under said applications.

X

Arizona's Bill of Complaint pleads only such rights to Colorado River water, if any, which the State has under the Colorado River Compact. This compact purports to provide for an "equitable division and apportionment of the use of the

waters of the Colorado River System".[3] These petitioners earnestly submit that said compact is not equitable; that it does not equitably apportion the waters of the Colorado River; that it is therefore invalid; that it unlawfully, unconstitutionally, without compensation and without due process of law, attempted and is attempting to take away from these petitioners and others of their classes, the use of waters previously appropriated under said prior and superior applications by the said Fred T. Colter and his successor, the petitioner, Sidney Kartus, the use of which waters equitably belong to Arizona and to petitioners for whom they were and are appropriated under and by virtue of the laws of the State of Arizona. Said compact attempts to contravene and destroy said prior applications. The compact is inequitable for the following additional reasons:

1. It does not consider prior appropriations of the waters of the Colorado River System.

2. The proportion of each state which drains into the river was not considered in making the apportionment.

3. The compact failed to take into account other river waters available to the other basin states, while Arizona has no rivers except the Colorado River System.

4. It did not provide for the best development of the river from the standpoint of obtaining the

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3. Article I, Colorado River Compact.

maximum multi-purpose use and conservation of the waters, including the reflow.

5. It attempts to divide water in perpetuity.

6. It did not consider the fact that the best reclamation and power sites in the Colorado River System are located entirely in Arizona or on Arizona's borders.

7. It did not consider that the greatest amount of irrigible lands within the river basin are located within Arizona.

8. It permits unlimited exportation of Colorado River System waters outside of the river's basin, contrary to conservation principles, and to the detriment of prior appropriations and the established and potential economy of Arizona and the entire river basin.

9. It did not consider that the prior appropriations and projects under the Colter Filings do not interfere with the legitimate rights of other states with lands in the river basin.

XII

The claims of petitioners are inextricably interwoven with those being made by Arizona through its Attorney General and the Arizona Interstate Stream Commission in its Bill of Complaint. Said Bill of Complaint seeks to have the Court decree that the Colorado River Compact is a valid, equitable apportionment of the waters of the Colorado River System, and that Arizona and water users therein including petitioners are entitled to only

such waters from the Colorado River System as are apportioned to it by the Colorado River Compact as it may be interpreted by this Court. Thus, it seeks to destroy the greater claims of petitioners based on the prior appropriations hereinabove set forth, which prior appropriations are in accord with a proper equitable apportionment and maximum, beneficial, economical use of the waters of the Colorado River. Unless petitioners are permitted to intervene, the Court will not be fully informed, or informed at all, of their claims which are inextricably interwoven with and, as set forth above, seriously affected by the claims presently being made in Arizona's Bill of Complaint.

XII

Petitioners have no adequate remedy at law or otherwise to prevent this attempted destruction of these property rights, rights which in the arid west are of inestimable value. Petitioner, Sidney Kartus, requested the Attorney General of the State of Arizona and the counsel for the Interstate Stream Commission to set forth in Arizona's Bill of Complaint the said applications and claimed property rights of these petitioners so that these matters could be adjudicated by the Court. His requests have been denied and the Bill of Complaint in no way mentions or pleads the applications and claims of these petitioners.

XIII

Petitioners have taken and are taking steps to perfect the water rights hereinabove mentioned. Plans have been formulated and efforts have been

and are being made by petitioners for the formation of an irrigation and power district to proceed with necessary construction work. The total cost of such a project will be a minimum of several hundred million dollars. In order to facilitate the obtaining of financial assistance for this construction under terms and conditions which are feasible, it is necessary that title of petitioners to the water rights herein claimed be confirmed and quieted. This is possible only through a decree of the Court.

XIV

In addition to the reasons hereinabove set forth, petitioners respectfully submit that a final solution to the long-standing controversy relating to the division of the waters of the Colorado River requires all claims within each state to be set forth. Only such an adjudication could fully inform the parties and the United States Government, whose interests in this matter are set forth in its Motion for Leave to Intervene, of their respective rights in the Colorado River. A suit which omits the claims of persons or states whose claims are interwoven with those being litigated and which asks only for the interpretation of a compact, can have no finality. The controversy which has continued unabated over twenty years and which has already resulted in three previous attemps to obtain relief from this Court[4] can only be finally laid to rest if the Court permits and re-

4. Arizona vs. California, 283 U. S. 423 (1931); Arizona vs. California, 292 U. S. 341 (1934); Arizona vs. California, 298 U. S. 558 (1936).

quires all claims to the use of waters of the Colorado River System to be brought before it on the factual evidence thereof. Petitioners submit that it is of great general interest and concern whether the stability of water rights existing under State and Federal Constitutions may be destroyed at any time by an inequitable interstate compact, from which any state party to it is free to withdraw at will. Petitioners further submit that if the court interprets only the compact, complaining parties and the many thousands of persons in a like position would not be represented because of failure or refusal of state officials to plead their property rights.

WHEREFORE, petitioners respectfully pray this Court to permit them to file a Petition for Intervention in this case.

Samuel Langerman

SAMUEL LANGERMAN
Attorney for Petitioners